

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

COREY GERWASKI,

Plaintiff

v.

STATE OF NEVADA ex rel. BOARD OF
REGENTS OF THE NEVADA SYSTEM OF
HIGHER EDUCATION, et al.,

Defendants

Case No.: 2:24-cv-00985-APG-MDC

**Order (1) Granting in Part UNLV's
Motion to Dismiss and (2) Granting Keith
Whitfield's Motion to Dismiss**

[ECF Nos. 12, 35]

Plaintiff Corey Gerwaski sues the University of Nevada, Las Vegas (UNLV),¹ its president Keith Whitfield, and several advocacy organizations. Gerwaski alleges that demonstrations on the UNLV campus caused him mental anguish, violated his constitutional rights, and caused him to lose his job at the UNLV library. Gerwaski asserts federal claims against UNLV and Whitfield in his official capacity for aiding and abetting terrorism, infringing several constitutional rights in violation of 42 U.S.C. § 1983, violating Titles VI and VII of the Civil Rights Act, and state law claims for intentional infliction of emotional distress and negligent hiring, retention, and supervision.

UNLV and Whitfield move to dismiss Gerwaski's first amended complaint (FAC) arguing that service was untimely, and in Whitfield's case, insufficient. They also move to dismiss for failure to state a claim on which relief could be granted on all claims except Gerwaski's Title VII claim against UNLV. UNLV and Whitfield argue that the claims are barred by the Eleventh Amendment and discretionary act immunity, and that Gerwaski fails to

¹ The named party is the State of Nevada ex rel. Board of Regents of the Nevada System of Higher Education on behalf of the University of Nevada, Las Vegas. For brevity, I will refer to the party as UNLV.

1 allege sufficient facts to support his claims. Gerwaski responds that service was timely because
 2 he served them within 90 days of filing an amended complaint, that he adequately served the
 3 defendants, and that he alleges sufficient facts in the FAC. He also argues that Eleventh
 4 Amendment immunity does not apply because he seeks prospective injunctive relief.

5 I dismiss Gerwaski's complaint against Whitfield because Gerwaski failed to properly
 6 serve Whitfield in his official capacity and Gerwaski fails to state a claim upon which relief can
 7 be granted. I dismiss Gerwaski's complaint against UNLV for all causes of action except his
 8 Title VI and Title VII claims. And I grant Gerwaski leave to amend his complaint and properly
 9 serve Whitfield or his successor.

10 **I. BACKGROUND²**

11 In the aftermath of Hamas's October 7, 2023 attacks on Israeli settlements and Israel's
 12 subsequent invasion of Palestine, several student and non-student organizations staged
 13 demonstrations on the UNLV campus in support of Palestine. Among these groups were
 14 codefendants Students for Justice of Palestine – UNLV (SJP-UNLV) and Nevadans for
 15 Palestinian Liberation (NPL). Gerwaski alleges that these groups and others coordinate
 16 messaging with Hamas and serve as Hamas's propaganda operation in the United States.
 17 According to Gerwaski, groups staged protests on campus espousing antisemitic rhetoric, and
 18 UNLV allowed these groups to "intimidate, harass, [and] assault their Jewish student population,
 19 without any substantive efforts to mitigate this hateful conduct, which violates UNLV's own
 20 policies against [the] same." ECF No. 6 at 16-17.

23 ² All facts are taken from the FAC (ECF No. 6), which I take as true when considering a motion to dismiss.

1 Gerwaski is a Jewish student at UNLV who wears the Jewish skullcap, or kippah, at all
2 times. Gerwaski serves in the UNLV student government and was hired as an employee at the
3 UNLV Lied Library in June 2023. Gerwaski alleges that he was asked inappropriate questions
4 about his Jewish heritage and sexual orientation during the library's onboarding process and that
5 he was "unjustly terminated" from that job in August 2023, "as a result of the blatant disparate
6 treatment and antisemitism that was exhibited by supervisors." *Id.* at 52. Gerwaski also alleges
7 that student government members and UNLV officials who oversee the student government were
8 hostile toward him and "verbally attacked and treated him poorly due to his identity as a kippa-
9 wearing Jew." *Id.* at 54. Gerwaski has also been exposed to verbal assaults by protesting
10 members of NPL who made hateful antisemitic comments to him. Gerwaski has chosen to cover
11 his kippah with a baseball cap or other head covering due to the antisemitic chants and chaos on
12 the UNLV campus.

13 Gerwaski attempted to raise his concerns about the campus chaos with Whitfield and the
14 UNLV Board of Regents. Gerwaski gave a two-minute speech to the Board of Regents about
15 antisemitism on campus in November 2023. He also confronted Whitfield during a student
16 senate meeting about the mass shooting at UNLV in January 2024 and told Whitfield that
17 students needed help fighting antisemitism on campus. Gerwaski reached out to Whitfield and
18 the Board of Regents several more times from February through March 2024, but did not receive
19 any response. Gerwaski alleges that the discrimination and antisemitism he has faced has led to
20 "extreme emotional distress manifested as great humiliation, embarrassment, shame, and other
21 pain and suffering." *Id.* at 72. Additionally, the stress has caused Gerwaski to struggle
22 academically, fail two classes, and be "effectively exiled from the Senate chambers because of
23 his Jewish identity." *Id.* at 54.

II. SERVICE OF PROCESS

“A federal court is without personal jurisdiction over a defendant unless the defendant has been served in accordance with Fed[eral] R[ule of] Civ[il] P[rocedure] 4.” *Crowley v. Bannister*, 734 F.3d 967, 974-75 (9th Cir. 2013) (quotation omitted). If a defendant is not properly served under Rule 4, it can assert the defense of insufficient service of process under Federal Rule of Civil Procedure 12(b)(5). While “Rule 4 is a flexible rule that should be liberally construed so long as a party receives sufficient notice of the complaint,” the serving party must substantially comply with the rule. *Crowley*, 734 F.3d at 975 (quotation omitted). The serving plaintiff bears the burden of establishing that a challenged service was valid. *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004).

A. Timeliness

Gerwaski initiated this lawsuit naming both UNLV and Whitfield as defendants on May 26, 2024. ECF No. 1. Gerwaski was therefore required to serve both defendants by August 24, 2024.

UNLV concedes that it received proper service when Gerwaski served both the Nevada Attorney General on August 29, 2024, and the Chancellor of the Nevada System of Higher Education on October 22, 2024. ECF No. 35 at 10-11. But UNLV argues that both dates are beyond the Rule 4(m) deadline, so service was untimely. Whitfield asserts that Gerwaski did not timely serve him because the attempted service happened on August 28, 2024. Gerwaski responds that service was timely because he filed an amended complaint and served both defendants within 90 days of filing the FAC. He also requests that I extend the service deadline if I find that service was untimely.

1 Federal Rule of Civil Procedure 4(m) requires the plaintiff to serve a defendant “within
2 90 days after the complaint is filed.” If the plaintiff fails to do so, I “must dismiss the action
3 without prejudice against that defendant or order that service be made within a specified time.”
4 *Id.* Rule 4(m)’s time limit “is not restarted by the filing of an amended complaint except as to
5 those defendants newly added in the amended complaint” because otherwise the plaintiff could
6 repeatedly file amended complaints “to extend the time for service indefinitely.” *Bolden v. City*
7 *of Topeka, Kan.*, 441 F.3d 1129, 1148 (10th Cir. 2006) (quotation omitted)).

8 Nevertheless, I must extend the 90-day time limit of Rule 4(m) if Gerwaski shows good
9 cause for failure to serve within 90 days. *Lemoge v. United States*, 587 F.3d 1188, 1198 (9th Cir.
10 2009). Gerwaski bears the burden of demonstrating good cause for the delay. Fed. R. Civ. P.
11 4(m); *Boudette v. Barnette*, 923 F.2d 754, 755-56 (9th Cir. 1991). Generally good cause is
12 equated with diligence. *Townsel v. Contra Costa Cnty., Cal.*, 820 F.2d 319, 320 (9th Cir. 1987).
13 A showing of good cause requires more than inadvertence or mistake of counsel. *Id.* “[A]t a
14 minimum, good cause means excusable neglect.” *In re Sheehan*, 253 F.3d 507, 512 (9th Cir.
15 2001) (quotation omitted).

16 Gerwaski did not timely serve the original complaint, and filing the amended complaint
17 did not extend the time to serve UNLV or Whitfield because they were named in the original
18 complaint. Gerwaski has not shown good cause for the delay. But Gerwaski asks that I exercise
19 my discretion to extend the deadline retroactively if I find that service was untimely.

20 Even though Gerwaski has not demonstrated good cause, I have discretion to extend time
21 for service or to dismiss the complaint without prejudice. *Id.* at 513. I may extend time for
22 service even after the 90-day period expires. *Efaw v. Williams*, 473 F.3d 1038, 1041 (9th Cir.
23 2007). In making this determination, I consider factors such as whether the party to be served

1 received actual notice of the lawsuit, the party to be served would suffer no prejudice, and the
2 serving party would be severely prejudiced if the complaint is dismissed. *Id.* I also may consider
3 whether the serving party eventually accomplished service. *Id.*

4 I extend the period for service in this case. As UNLV acknowledges, the statute of
5 limitations has not yet run, so Gerwaski could simply refile his lawsuit against UNLV and
6 Whitfield and then move to consolidate the cases. UNLV also had actual notice of the lawsuit
7 when it attempted to mediate the employment claim with the Equal Employment Opportunity
8 Commission in June 2024, and when Gerwaski made incomplete service to the Attorney General
9 on August 29, 2024. *See* ECF No. 38 at 28-32. Finally, UNLV was eventually served properly in
10 this lawsuit. Because it would not prejudice UNLV or Whitfield and will promote economy of
11 judicial resources, I deny the defendants' motion to dismiss for untimely service and extend the
12 time for Gerwaski to serve UNLV and Whitfield. Gerwaski has already properly served UNLV,
13 so he need not do so again. As discussed below, I dismiss Gerwaski's claims against Whitfield,
14 with leave to amend. If Gerwaski files an amended complaint that asserts claims against
15 Whitfield, then he must properly serve Whitfield within 14 days after he files his amended
16 complaint.

17 **B. Sufficiency**

18 Although not clear from the FAC, Gerwaski clarified in response to Whitfield's motion to
19 dismiss that he sues Whitfield in his official capacity only. ECF No. 19 at 2, 11. Federal Rule of
20 Civil Procedure 4(j)(2) requires service of process on a state, municipal corporation, or any state-
21 created governmental organization subject to suit be served by "(A) delivering a copy of the
22 summons and of the complaint to its chief executive officer; or (B) serving a copy of each in the
23 manner prescribed by that state's law for serving a summons or like process on such a

1 defendant.” Nevada requires service on a state employee sued in their official capacity be made
2 by delivering a copy of the summons and complaint to “(A) the Attorney General, or a person
3 designated by the Attorney General to receive service of process, at the Office of the Attorney
4 General in Carson City; and (B) the current or former public officer or employee, or an agent
5 designated by him or her to receive service of process.” Nev. R. Civ. P. 4.2(d)(2).

6 Although Gerwaski argues that he served Whitfield at his home in Las Vegas, the process
7 server left the summons and complaint with “Erica, co-occupant.” ECF No. 9. Ericka Smith
8 gave a sworn declaration that she was at Whitfield’s home taking care of his dog while Whitfield
9 was traveling when the process server came to the house. ECF No. 13 at 3. Smith does not
10 reside at Whitfield’s home, is not authorized to accept service on his behalf, and did not accept
11 the papers from the process server. *Id.* at 2-3. Whitfield confirms these facts in his declaration.
12 ECF No. 14 at 2.

13 Serving Whitfield’s dog sitter is not sufficient service on Whitfield himself or as chief
14 executive officer of a state entity. I therefore grant Whitfield’s motion to dismiss the complaint
15 for insufficient service under Rule 12(b)(5). I dismiss Gerwaski’s claims against Whitfield
16 without prejudice to him properly serving the UNLV President in his official capacity. Because
17 Whitfield is no longer the President of UNLV,³ Gerwaski should serve the current interim
18 UNLV President, and any permanent replacement will be substituted automatically under
19 Federal Rule of Civil Procedure 25(d). *See also R. W. v. Columbia Basin Coll.*, 77 F.4th 1214,
20 1222-23 (9th Cir. 2023) (“An official-capacity suit for injunctive relief is properly brought
21

22 ³ Whitfield announced his resignation as UNLV President on March 3, 2025. *An Important*
23 *Announcement from President Keith E. Whitfield: Thank You Rebels*, UNLV (Mar. 3, 2025),
<https://www.unlv.edu/announcement/office-president/inportant-announcement-president-keith-e-whitfield-thank-you-rebels>.

1 against persons who would be responsible for implementing any injunctive relief.” (quotation
2 omitted)). Because I grant Gerwaski leave to properly serve the UNLV President, I will address
3 Whitfield’s substantive motion to dismiss so that Gerwaski may amend his suit in accordance
4 with this order before effecting service.

5 **III. FAILURE TO STATE A CLAIM**

6 In considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), I take
7 all well-pleaded allegations of material fact as true and construe the allegations in a light most
8 favorable to the non-moving party. *Kwan v. SanMedica Int’l*, 854 F.3d 1088, 1096 (9th Cir.
9 2017). However, I do not assume the truth of legal conclusions merely because they are cast in
10 the form of factual allegations. *Navajo Nation v. Dep’t of the Interior*, 876 F.3d 1144, 1163 (9th
11 Cir. 2017). A plaintiff must also make sufficient factual allegations to establish a plausible
12 entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A claim is facially
13 plausible when the complaint alleges facts that allow the court to draw a reasonable inference
14 that the defendant is liable for the alleged misconduct. *Ashcroft v. Iqbal*, 556 U.S. 662, 678
15 (2009). When the claims have not crossed the line from conceivable to plausible, the complaint
16 must be dismissed. *Twombly*, 550 U.S. at 570.

17 **A. Eleventh Amendment**

18 Both UNLV and Whitfield claim Eleventh Amendment immunity from all of Gerwaski’s
19 claims except those brought under the Civil Rights Act. Gerwaski acknowledges that the
20 Eleventh Amendment limits the claims he can bring against UNLV and its president but
21 maintains that the exception first recognized by the United States Supreme Court in *Ex parte*
22 *Young*, 209 U.S. 123 (1908) allows him to seek injunctive relief for ongoing violations of federal
23 rights.

1 “The Eleventh Amendment bars suits against the State or its agencies for all types of
2 relief absent unequivocal consent by the state.” *Krainski v. Nevada ex rel. Bd. of Regents of Nev.*
3 *Sys. of Higher Educ.*, 616 F.3d 963, 967 (9th Cir. 2010) (quotation omitted). This immunity
4 extends to state officials in their official capacity. *Id.* A narrow exception exists in official
5 capacity suits “where the relief sought is prospective in nature and is based on an ongoing
6 violation of the plaintiff’s *federal* constitutional or statutory rights.” *Cent. Rsr. Life of N. Am.*
7 *Ins. Co. v. Struve*, 852 F.2d 1158, 1161 (9th Cir. 1988) (emphasis in original). Such relief must
8 be designed to end a continuing violation of federal law, but “compensatory or deterrence
9 interests are insufficient to overcome the dictates of the Eleventh Amendment.” *Green v.*
10 *Mansour*, 474 U.S. 64, 68 (1985). Gerwaski “must identify a practice, policy or procedure that
11 animates the constitutional violation at issue.” *Ariz. Students’ Ass’n v. Ariz. Bd. of Regents*, 824
12 F.3d 858, 865 (9th Cir. 2016). In determining whether Gerwaski’s pleading avoids an Eleventh
13 Amendment bar to suit, I “need only conduct a straightforward inquiry into whether the
14 complaint alleges an ongoing violation of federal law and seeks relief properly characterized as
15 prospective.” *Verizon Md., Inc. v. Pub. Svc. Com’n of Md.*, 535 U.S. 635, 645 (2002) (cleaned
16 up).

17 Because the *Ex parte Young* doctrine applies only to state officers sued in their official
18 capacity, only Whitfield in his capacity as UNLV President is subject to suit in this court. I
19 therefore grant in part UNLV’s motion to dismiss because the Eleventh Amendment bars
20 Gerwaski from suing UNLV in federal court, except his claims under Title VI (Claim 3) and
21 Title VII (Claim 12) of the Civil Rights Act, which provide for implicit waiver or abrogation,
22 respectively, of the Eleventh Amendment bar. I dismiss his claims for aiding and abetting
23 terrorism; § 1983; IIED; and negligent hiring, retention, and supervision. I dismiss those claims

1 with prejudice to refiling in federal court but without prejudice to filing in state court, except for
2 his claim under the Antiterrorism Act, which I dismiss with prejudice as explained below.

3 With respect to Whitfield, Gerwaski asserts that he has pleaded ongoing federal law
4 violations and requested injunctive relief. The injunctive relief Gerwaski requests is

5 (1) “a Declaration from the Court that Defendants have violated Plaintiff’s constitutional
6 right to equal protection,”

7 (2) “an immediate hearing on Plaintiff’s Motion for Temporary Restraining Order, and,
8 upon hearing, enter an Order restraining Defendants from allowing non-student groups
9 interfere (sic) and continue to torment Jewish students on campus by engaging in
10 unprotected speech,”

11 (3) “Permanently enjoin Defendants SJP-UNLV and NSJP from engaging in any campus
12 activities, banning them from UNLV’s campus,” and

13 (4) “Permanent[ly] enjoin all non-student organizations that violate NSHE student
14 conduct and policies from engaging in any campus activities, banning them from
15 UNLV’s campus.”

16 ECF No. 6 at 76. Of these requests, only the second might be fairly characterized as prospective
17 relief directed at Whitfield, but even that request is tied to a temporary restraining order that has
18 not been filed and does not remedy an identified ongoing violation of federal law.

19 Because Gerwaski has not adequately alleged an ongoing violation of federal law and
20 requested prospective relief to correct that violation, I dismiss his claims for aiding and abetting
21 terrorism, § 1983, Title VI, IIED, and negligent hiring, retention, and supervision as barred by
22 the Eleventh Amendment. However, I grant Gerwaski leave to amend his complaint and will
23 offer guidance on the deficiencies of his claims as currently pleaded.

1 **B. Antiterrorism Act (Count 1)**

2 In addition to Eleventh Amendment immunity, both UNLV and Whitfield argue that they
3 are not “persons” subject to liability under the Antiterrorism Act. Gerwaski does not engage
4 with this argument, instead asserting that he has established links between Hamas, the various
5 advocacy organizations, and UNLV and Whitfield. He states, “[t]here could not be a clearer,
6 bolder demonstration of substantial assistance of UNLV to Hamas” than statements by a Hamas
7 leader that student protests have renewed and reinvigorated Hamas’s goals. ECF No. 38 at 14.

8 The Antiterrorism Act allows those injured by an act of international terrorism to sue the
9 relevant terrorists directly or sue “any person who aids and abets, by knowingly providing
10 substantial assistance, or who conspires with the person who committed such an act of
11 international terrorism.” 18 U.S.C. § 2333(d)(2). As used in that subsection, the term “person”
12 has the meaning given the term in 1 U.S.C. § 1. 18 U.S.C. § 2333(d)(1). Section 1 defines a
13 person as including “corporations, companies, associations, firms, partnerships, societies, and
14 joint stock companies as well as individuals.” Interpreting § 1, the United States Supreme Court
15 has observed that the Federal Government and its agencies are notably absent from the list. *See*
16 *Return Mail, Inc. v. U.S. Postal Svc.*, 587 U.S. 618, 626-27 (2019). “In the absence of an express
17 statutory definition, the Court applies a longstanding interpretive presumption that ‘person’ does
18 not include the sovereign.” *Id.* at 626 (quotation omitted). “The presumption is particularly
19 applicable where it is claimed that Congress has subjected the States to liability to which they
20 had not been subject before.” *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 780-
21 81 (2000) (quotation omitted).

22 There is nothing in the Antiterrorism Act’s text indicating that Congress intended to
23 subject the States to new liability. Thus, the State of Nevada, its subdivisions, and its employees

1 acting in their official capacities are not “persons” subject to liability for aiding and abetting
2 terrorism under 18 U.S.C. § 2333(d)(2). I therefore dismiss Gerwaski’s claims under that statute
3 with prejudice.

4 **C. Section 1983**

5 To prevail on a claim under 42 U.S.C. § 1983, a plaintiff must show “(1) that a right
6 secured by the Constitution or laws of the United States was violated, and (2) that the alleged
7 violation was committed by a person acting under the color of State law.” *Long v. County of Los*
8 *Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). Gerwaski brings six separate claims under
9 § 1983.

10 “States or governmental entities that are considered ‘arms of the State’ for Eleventh
11 Amendment purposes are not ‘persons’ under § 1983.” *Flint v. Dennison*, 488 F.3d 816, 824 (9th
12 Cir. 2007) (quotation omitted). The same is true for state officials sued for damages in their
13 official capacity. *Id.* at 824-25. And a state university, such as UNLV, is an arm of the State
14 entitled to Eleventh Amendment immunity. *Id.* at 825. In addition to Eleventh Amendment
15 immunity, UNLV may not be held liable under *Monell*⁴ because the United States Supreme
16 Court declined to extend *Monell* to suits against state government entities. *Will v. Mich. Dep’t of*
17 *State Police*, 491 U.S. 58, 70 (1989). So, only Gerwaski’s § 1983 claims against Whitfield in his
18 official capacity may continue in federal court, and only for prospective injunctive relief for
19 ongoing violations of federal law under the *Ex Parte Young* exception. *Struve*, 852 F.2d at 1161.
20 I therefore dismiss all of Gerwaski’s § 1983 claims with prejudice to refiling in federal court, but
21 not state court.

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23

⁴ *Monell v. Dept. of Soc. Servs. of City of New York*, 436 U.S. 658 (1978).

1 1. Equal Protection (Count 2)

2 Whitfield argues that Gerwaski's equal protection claim should be dismissed because
3 Gerwaski failed to plausibly allege that Whitfield took any government action against Gerwaski
4 or that Whitfield acted with discriminatory intent. Gerwaski responds that he alleged specific
5 communications to Whitfield, from which Whitfield took discriminatory action against him. In
6 his response brief, Gerwaski does not specify what discriminatory actions Whitfield took.

7 “To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of
8 the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or
9 purpose to discriminate against the plaintiff based upon membership in a protected class.”

10 *Sampson v. Cnty. of Los Angeles by and through Los Angeles Cnty. Dep't of Child. and Fam.*
11 *Svcs.*, 974 F.3d 1012, 1022 (9th Cir. 2020) (quotation omitted). “Malice, intent, knowledge, and
12 other conditions of a person's mind may be alleged generally.” Fed. R. Civ. P. 9(b).

13 It is unclear from the FAC what actions Whitfield took under color of law to intentionally
14 discriminate against Gerwaski on the basis of his race and religion. It states in conclusory
15 fashion that the defendants “carried out customs and/or policies and or practices and usage of
16 deliberate indifference and tolerance for discriminatory acts and expressions, on the basis of race
17 and religion, failed to protect Plaintiff and prohibit the discriminatory conduct.” ECF No. 6 at 59.
18 The FAC does not specify what these customs, policies, or practices are, or what actions can be
19 fairly attributed to Whitfield. The FAC also does not allege an ongoing violation of federal law
20 or describe prospective relief to remedy such a violation. I therefore dismiss Gerwaski's Equal
21 Protection claim without prejudice. I grant Gerwaski leave to amend as to Whitfield in his
22 official capacity if he can plausibly allege facts to support the claim and tie those facts to an
23 ongoing constitutional violation for which he seeks injunctive relief.

1 2. Failure to Train (Count 4)

2 Whitfield argues that Gerwaski's failure-to-train § 1983 claim is duplicative of his Title
3 VI claim (count 3) and that only the institution that receives federal funds may be properly sued
4 under Title VI. Gerwaski does not respond to the argument that the § 1983 failure-to-train claim
5 is duplicative, and instead argues that Title VI liability extends to Whitfield individually as the
6 institution's president.

7 Failure-to-train may be brought as a § 1983 claim against a municipality under the
8 doctrine described in *Monell. City of Canton, Ohio v. Harris*, 489 U.S. 378, 387 (1989).
9 Although UNLV itself is not subject to suit under *Monell*, where an official acts on behalf of a
10 government organization by determining how to spend its resources, he may be subject to suit
11 under *Monell* principles as a policymaker on behalf of that organization. *See Miranda v. Clark*
12 *Cnty., Nev.*, 319 F.3d 465, 469-70 (9th Cir. 2003). "To prevail on a failure-to-train theory,
13 [Gerwaski] must demonstrate that [Whitfield]'s failure to train amounts to deliberate indifference
14 to the rights of persons with whom the untrained employees come into contact." *Perez v. City of*
15 *Fresno*, 98 F.4th 919, 931 (9th Cir. 2024) (cleaned up). "Deliberate indifference is a high legal
16 standard, requiring proof that a [government] actor disregarded a known or obvious consequence
17 of his action." *Id.* (quotation omitted). The plaintiff typically must allege a "pattern of similar
18 constitutional violations, rather than proof of a single incident . . . to demonstrate deliberate
19 indifference." *Id.* (quotation omitted). But a single incident may support liability "in the rare
20 case where the unconstitutional consequences of failing to train are patently obvious." *Id.*
21 (quotation omitted). "Merely negligent training is insufficient to support a *Monell* claim." *Id.*

22 Gerwaski has plausibly alleged that Whitfield failed to adequately train UNLV
23 employees on Title VI requirements, that Whitfield was aware of the need to train employees on

1 Title VI, that faculty members engaged in discriminatory conduct, and that Whitfield did not
2 correct this training deficiency. For example, Gerwaski alleges that Whitfield “failed to train
3 [personnel], administrators and faculty in identifying and allowing violations of Title VI
4 discrimination against Jewish students and faculty on campus.” ECF No. 6 at 63. According to
5 the FAC, UNLV employees who oversaw the student government discriminated against him by
6 dissuading people from voting for Gerwaski on account of his religion, violating open meeting
7 laws, and encouraging his impeachment from the student senate. *See id.* at 53-54. Gerwaski also
8 alleges that he notified Whitfield and the Board of Regents about discrimination against Jewish
9 students at UNLV. *Id.* at 54-55. And he alleges that the failure to train these employees on Title
10 VI constitutes deliberate indifference against him because he is the kind of person these
11 employees routinely encounter. Gerwaski has plausibly alleged the substantive portion of a
12 failure-to-train claim.

13 Because Gerwaski may proceed only against Whitfield under *Ex parte Young*, however,
14 he must also plausibly allege that there is an ongoing violation of his rights under Title VI and
15 request prospective relief appropriate to remedy that violation. Gerwaski has not done so.
16 Rather, he explicitly seeks money damages, punitive damages, and attorney fees, which are not
17 available against Whitfield in this kind of § 1983 action. *Id.* at 64-65. I therefore dismiss count 4
18 of the FAC without prejudice. I grant Gerwaski leave to amend this claim against Whitfield if he
19 can plausibly allege additional facts to support the claim and tie those facts to an ongoing
20 constitutional violation for which he seeks injunctive relief.

21 3. Ratification (Count 5)

22 Whitfield argues that Gerwaski does not allege that Whitfield expressly ratified any
23 constitutional violation. Gerwaski’s response is difficult to decipher, but he appears to argue that

1 Whitfield is responsible for all of the actions by UNLV employees alleged in the “statement of
2 facts” section of the FAC. ECF Nos. 6 at 52-56; 19 at 14 & n.4. It is not clear whether Gerwaski
3 means to invoke supervisory liability against Whitfield, as Whitfield appears to analyze it, or
4 *Monell* liability as the ultimate decisionmaker for the government entity. Based on his
5 characterization of a ratification claim as one based on either a practice or custom or an act by a
6 policy making official,⁵ and the fact that Gerwaski sues Whitfield only in his official capacity, I
7 interpret the claim as one brought against Whitfield as a final policymaker under *Monell*
8 principles similar to his failure-to-train claim.

9 A municipal entity may be liable under § 1983 when (1) it “acts pursuant to an expressly
10 adopted official policy,” (2) it acts under “a longstanding practice or custom,” or (3) “the
11 individual who committed the constitutional tort was an official with final policy-making
12 authority or such an official ratified a subordinate’s unconstitutional decision or action and the
13 basis for it.” *Hartzell v. Marana Unified Sch. Dist.*, 130 F.4th 722, 734 (9th Cir. 2025) (quotation
14 omitted). Gerwaski does not allege that any UNLV employees acted under an expressly adopted
15 official policy, so I limit my analysis to the second and third scenarios.

16 The FAC alleges that “policy makers at UNLV have a custom and practice of failing
17 and/or refusing to discipline faculty members, administrators and students, involved in
18 systematically and unlawfully engaging in open antisemitism.” ECF No. 6 at 65. It also alleges
19 that “UNLV has ratified, condoned, approved, and encouraged the antisemitic conduct on
20 campus by allowing non-student groups to wreak havoc, demonize, traumatize and harass Jewish
21 students at UNLV.” *Id.* at 66. These conclusory statements do not adequately identify a practice
22 or custom with enough specificity to trace it to Gerwaski’s injuries. The FAC also does not
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⁵ ECF No. 6 at 65.

1 allege sufficient facts to show that a practice or custom was longstanding.⁶ Nor does it allege an
2 ongoing violation of federal law to support prospective injunctive relief. The FAC also does not
3 identify what illegal acts a subordinate employee performed that Whitfield ratified. Finally, if
4 Gerwaski is able to articulate an ongoing violation of federal law or the federal Constitution, he
5 must request prospective relief that is fashioned to remedy that violation.

6 I therefore dismiss count 5 of the FAC without prejudice. I grant Gerwaski leave to
7 amend this claim against Whitfield if he can plausibly allege additional facts to support the claim
8 and tie those facts to an ongoing constitutional violation for which he seeks injunctive relief.

9 4. Free Exercise (Count 6)

10 Whitfield argues that Gerwaski does not plausibly allege a free exercise claim because he
11 alleges only that verbal harassment by non-parties caused him to choose to cover his kippah, not
12 that Whitfield acted to burden his rights. Gerwaski responds that Whitfield fomented and
13 encouraged antisemitic behavior on campus and ignored Gerwaski's complaints, leading
14 Gerwaski to begin covering his kippah.

15 "A person asserting a free exercise claim must show that the government action in
16 question substantially burdens the person's practice of [his] religion." *Jones v. Williams*, 791
17 F.3d 1023, 1031 (9th Cir. 2015). "A substantial burden places more than an inconvenience on
18 religious exercise; it must have a tendency to coerce individuals into acting contrary to their
19 religious beliefs or exert substantial pressure on an adherent to modify his behavior and to
20 violate his beliefs." *Id.* at 1031-32 (cleaned up).

21
22
23 ⁶ See *Gordon v. Cnty. of Orange*, 6 F.4th 961, 974 (9th Cir. 2021) ("Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency, and consistency that the conduct has become a traditional method of carrying out policy." (quotation omitted)).

Gerwaski has not plausibly alleged an ongoing violation of his free exercise rights and has not requested prospective relief to remedy such a violation. Gerwaski attempts to tie Whitfield's toleration of protestors on campus to Gerwaski's feeling that it was necessary to cover his kippah with a baseball cap to avoid conflict with those protestors. However, Gerwaski's free exercise claim must be based on government action that substantially burdens his religion, not the actions of non-parties. Gerwaski also alludes to retaliation against him because of his religious beliefs. But Gerwaski does not identify what retaliatory actions Whitfield took or tie those actions to a specific protected religious activity. Thus, I dismiss count 6 of the FAC without prejudice. I grant Gerwaski leave to amend this claim against Whitfield if he can plausibly allege additional facts to support the claim and tie those facts to an ongoing constitutional violation for which he seeks injunctive relief.

5. Free Speech Retaliation (Count 7)

Whitfield argues that Gerwaski has not plausibly alleged that he engaged in constitutionally protected speech or that Whitfield took any action to chill such speech. Gerwaski responds that he has alleged sufficient facts for this claim. It is unclear whether Gerwaski's claim stems from government retaliation to constitutionally protected speech or employment-related retaliation. Because he also brings an employment claim under Title VII (count 12), I will assess count 7 as a constitutional claim.

For a First Amendment retaliation claim, Gerwaski must plausibly allege that (1) he "engaged in a constitutionally protected activity," (2) Whitfield's actions "would chill a person of ordinary firmness from continuing to engage in the protected activity, and (3) the protected activity was a substantial or motivating factor in [Whitfield's] conduct." *O'Brien v. Welty*, 818 F.3d 920, 932 (9th Cir. 2016) (quotation omitted).

1 Regardless of whether he is referring to his speech on campus or in the employment
2 context, Gerwaski has not identified what protected activity he engaged in or what specific
3 actions Whitfield took in retaliation. He also has not plausibly alleged an ongoing violation of
4 his rights, which prospective relief could address. I therefore dismiss count 7 of the FAC
5 without prejudice. I grant Gerwaski leave to amend this claim against Whitfield if he can
6 plausibly allege additional facts to support the claim and tie those facts to an ongoing
7 constitutional violation for which he seeks injunctive relief.

8 6. Compelled Speech (Count 8)

9 Whitfield argues that Gerwaski does not identify what policy he is being forced to
10 support or agree with as a condition of enrollment or employment, nor does he identify what
11 actions Whitfield took to compel such agreement. Gerwaski responds that Whitfield allowed
12 outside groups to violate UNLV protocols and policies, Gerwaski urged Whitfield to follow the
13 policies, and Whitfield refused to do so. Unknown individuals then retaliated against Gerwaski,
14 which Gerwaski told Whitfield about in an email. Gerwaski argues that this retaliation is
15 “demonstrative of compelled speech.” ECF No. 19 at 18.

16 The “right of freedom of thought protected by the First Amendment against state action
17 includes both the right to speak freely and the right to refrain from speaking at all.” *Wooley v.*
18 *Maynard*, 430 U.S. 705, 714 (1977). Gerwaski has not identified what speech Whitfield or
19 UNLV is compelling him to engage in or what methods of coercion compelled him to speak. His
20 argument that he is forced to acquiesce to Whitfield’s decisions is mere disagreement rather than
21 compelled speech. Gerwaski must identify what speech Whitfield is compelling him to engage
22 in, what means Whitfield is using to compel that speech, and plausibly allege that the harm is
23 ongoing and can be remedied with prospective relief. I therefore dismiss count 8 of the FAC

1 without prejudice. I grant Gerwaski leave to amend this claim against Whitfield if he can
2 plausibly allege additional facts to support the claim and tie those facts to an ongoing
3 constitutional violation for which he seeks injunctive relief.

4 **D. State Law Claims (Counts 9, 10, and 11)**

5 Gerwaski also brings claims under state common law for intentional infliction of
6 emotional distress (count 9), negligent hiring (count 10), and negligent retention and supervision
7 (count 11). Nevada has not waived Eleventh Amendment immunity from suit in federal court.
8 Nev. Rev. Stat. § 41.031(3). And because state-law claims do not raise an ongoing violation of
9 federal law or federal constitutional rights, the *Ex parte Young* exception does not apply. *Struve*,
10 852 F.2d at 1161. I therefore dismiss counts 9, 10, and 11 with prejudice to refiling them in
11 federal court but without prejudice to Gerwaski pursuing them in state court.

12 **E. Civil Rights Act Claims**

13 Whitfield argues that Gerwaski's claims under Titles VI and VII of the Civil Rights Act
14 should be dismissed because Whitfield is neither an institution receiving federal funds, nor an
15 employer. UNLV argues that Gerwaski's Title VI claim should be dismissed because he has not
16 plausibly alleged intentional discrimination. UNLV does not move to dismiss Gerwaski's Title
17 VII claim against it. ECF No. 35 at 20. Gerwaski responds that he has plausibly alleged a system
18 of deliberate indifference by UNLV and Whitfield and that Title VII provides for individual
19 liability.

20 1. Title VI (Count 3)

21 Title VI provides that "[n]o person in the United States shall, on the ground of race,
22 color, or national origin, be excluded from participation in, be denied the benefits of, or be
23 subjected to discrimination under any program or activity receiving Federal financial assistance."

1 42 U.S.C. § 2000d. “In a Title VI claim, the proper defendant is the entity receiving federal
2 funds, not the employees who are employed by the entity.” *Drawsand v. F.F. Props., L.L.P.*, 866
3 F. Supp. 2d 1110, 1122 (N.D. Cal. 2011).

4 A recipient of federal funds violates Title VI when (1) “there is a racially hostile
5 environment,” (2) the recipient “had notice of the problem,” and (3) the recipient “failed to
6 respond adequately to redress the racially hostile environment.” *Montiero v. Tempe Union High*
7 *Sch. Dist.*, 158 F.3d 1022, 1033 (9th Cir. 1998) (quotation omitted). Title VI provides a private
8 right of action only for intentional discrimination. *Alexander v. Sandoval*, 532 U.S. 275, 280
9 (2001). Intentional discrimination “may be met by showing deliberate indifference,” which is
10 “knowledge that a harm to a federally protected right is substantially likely, and a failure to act
11 upon that likelihood.” *Mark H. v. Lemahieu*, 513 F.3d 922, 938 (9th Cir. 2008) (quotations
12 omitted); *Montiero*, 158 F.3d at 1034 (applying deliberate indifference standard to Title VI).
13 Although Gerwaski must demonstrate intent at trial, the FAC need allege only that UNLV is
14 engaging in discrimination. *Montiero*, 158 F.3d at 1026. As a recipient of federal funds, UNLV
15 may not claim Eleventh Amendment immunity for claims under Title VI. 42 U.S.C. § 2000d–
16 7(a); *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (2004).

17 Gerwaski sues Whitfield in his official capacity as UNLV President, not as an employee
18 or in his individual capacity. A suit against Whitfield in his official capacity is not a suit against
19 him but rather his office, which is “no different from a suit against the State itself.” *Will*, 491
20 U.S. at 71. As such, Gerwaski may sue Whitfield for prospective injunctive relief for ongoing
21 violations of Title VI under the *Ex parte Young* doctrine, but not for damages because Whitfield
22 is not the recipient of federal funds. *See Miranda B. v. Kitzhaber*, 328 F.3d 1181, 1188-89 (9th
23 Cir. 2003) (acknowledging that other circuits allow *Ex parte Young* cases for Title VI violations

1 and adopting that rationale for comparable provisions in Title II). Like his § 1983 claims,
2 however, Gerwaski has not requested prospective relief to address ongoing violations of his
3 rights under Title VI. I therefore dismiss count 3 of the FAC as to Whitfield without prejudice. I
4 grant Gerwaski leave to amend this claim against Whitfield in his official capacity if Gerwaski
5 can plausibly allege additional facts to support the claim and tie those facts to an ongoing
6 constitutional violation for which he seeks injunctive relief.

7 Gerwaski has plausibly alleged a Title VI violation against UNLV. He alleges that there
8 is a racially hostile environment on the UNLV campus with antisemitic protestors, student
9 groups, and UNLV administrators discriminating against Gerwaski based on his race and
10 religion. He also alleges that he informed both Whitfield and the Board of Regents about this
11 racially hostile environment and that neither of them adequately responded to his complaints.
12 UNLV's argument that it responded adequately to Gerwaski's complaints presents additional
13 facts outside of the pleadings. I opt not to convert its motion into one for summary judgment
14 under Rule 12(d) because Gerwaski has not been given a reasonable opportunity to present all of
15 his evidence. I therefore deny UNLV's motion to dismiss Gerwaski's Title VI claim.

16 2. Title VII (Count 12)

17 Title VII prohibits various workplace practices by employers. *See* 42 U.S.C. § 2000e-2.
18 However, "Title VII does not provide a cause of action for damages against supervisors or fellow
19 employees." *Holly D. v. Cal. Inst. of Tech.*, 339 F.3d 1158, 1179 (9th Cir. 2003). Congress has
20 abrogated States' sovereign immunity for suits under Title VII. *Nev. Dept. of Hum. Res. v. Hibbs*,
21 538 U.S. 721, 729-30 (2003).

22 Because Gerwaski sues Whitfield in his official capacity, it is equivalent to a suit against
23 the entity he works for, making him a redundant defendant. *Ctr. For Bio-Ethical Reform, Inc. v.*

1 *Los Angeles Cnty. Sheriff Dep't*, 533 F.3d 780, 799 (9th Cir. 2008); *see also Ames v. City of*
2 *Novato*, No. 16-cv-02590-JST, 2016 WL 6024587, at *4 (N.D. Cal. Oct. 14, 2016) (dismissing
3 Title VII official capacity claims as redundant where the employer was also named as a
4 defendant). Any injunction against UNLV would necessarily apply to the office of the president
5 as well. *See Ames*, 2016 WL 6024587, at *4. I therefore dismiss Gerwaski's Title VII claims
6 against Whitfield with prejudice because they are duplicative of his claims against UNLV.

7 **IV. SUMMARY**

8 I grant Whitfield's motion to dismiss all claims for insufficient service under Rule
9 12(b)(5) without prejudice. I grant Gerwaski an extension of time to serve Whitfield or his
10 successor in the office of UNLV President. I also dismiss Gerwaski's claims against Whitfield
11 for failure to state a claim. I dismiss counts 1 and 12 under the Antiterrorism Act and Title VII
12 with prejudice because Whitfield is not a proper defendant. I dismiss counts 9, 10, and 11 with
13 prejudice to refiling in federal court but without prejudice to bringing them in state court because
14 Whitfield is entitled to sovereign immunity from state claims in federal court. I dismiss
15 Gerwaski's remaining claims brought under Title VI and 42 U.S.C. § 1983 without prejudice and
16 grant Gerwaski leave to amend these claims to address the deficiencies I identified in this order.

17 I grant in part UNLV's motion to dismiss. I dismiss count 1 with prejudice because
18 UNLV is not a person under the Antiterrorism Act. I dismiss counts 2, 4, 5, 6, 7, 8, 9, 10, and 11
19 with prejudice to refiling them in federal court because UNLV is entitled to sovereign immunity.
20 I dismiss these claims without prejudice to Gerwaski pursuing them in state court. I deny
21 UNLV's motion to dismiss count 3 brought under Title VI, which will proceed against UNLV
22 along with count 12 under Title VII, which UNLV did not move to dismiss.

1 If Gerwaski chooses to amend his complaint, he is advised to comply with Federal Rule
2 of Procedure 8(a), which requires only “a short and plain statement of the claim” showing he is
3 entitled to relief and “a demand for the relief sought.” Gerwaski’s FAC contains 51 pages of
4 background material before getting to a five-page “Statement of Facts” that actually pertains to
5 Gerwaski. ECF No. 6 at 52-56. Although some background and jurisdictional information may
6 be helpful, Gerwaski also spends many unnecessary pages describing a national organization’s
7 response to a congressional subpoena, repetitive allegations about the inner workings of various
8 terrorist organizations, and activities at campuses other than UNLV.

9 **V. CONCLUSION**

10 I THEREFORE ORDER that defendant Keith Whitfield’s motion to dismiss **(ECF No.**
11 **12) is GRANTED.**

12 I FURTHER ORDER that defendant State of Nevada ex rel. Board of Regents of the
13 Nevada System of Higher Education on behalf of University of Nevada, Las Vegas’s motion to
14 dismiss **(ECF No. 35) is GRANTED in part.**

15 I FURTHER ORDER that by June 3, 2025, Corey Gerwaski may file an amended
16 complaint to cure the deficiencies identified in this order. If he chooses to include claims against
17 Whitfield in his amended complaint, Gerwaski may serve defendant Keith Whitfield in his
18 official capacity or his successor to the office of UNLV President within 14 days of filing his
19 amended complaint. If Gerwaski does not amend or serve the UNLV President by these dates,
20 this case will proceed against UNLV on his Title VI and Title VII claims.

21 DATED this 5th day of May, 2025.

22
23 

ANDREW P. GORDON
CHIEF UNITED STATES DISTRICT JUDGE